

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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R-II

FILE: B-219806

DATE: October 9, 1985

MATTER OF: O.K. Tool & Die Company

DIGEST:

Protest asserting that contract terminated to correct evaluation error made during award process should be reinstated is dismissed. GAO reviews such terminations for the limited purpose of examining whether the initial award was improper, and if so, whether the corrective action taken is sufficient to protect the integrity of the competitive procurement system, and these matters are not in issue.

O.K. Tool & Die Company protests the termination of a contract for 5,376 red medical warning tags awarded by the Defense Logistics Agency (DLA) under invitation for bids (IFB) No. DLA120-85-B-2058. O.K. also protests the anticipated award of a contract to Brenner Metal Products Corporation under that solicitation. O.K.'s contract was terminated because DLA discovered after making award to O.K. that a 9 percent discount Brenner had offered had been overlooked. Brenner is the low bidder when the discount is included. O.K. says its contract should be reinstated because it has incurred costs of over \$3000 and has received government furnished material. Therefore, the protester argues the cost to the government to terminate its contract will far exceed the savings obtained by now awarding the contract to Brenner. Alternatively, O.K. asserts that the procurement should be canceled and resolicited.

We dismiss the protest.

In response to the IFB, O.K. offered to furnish the tags at a unit price of \$10.50, less a 0.25 percent prompt payment discount. Brenner bid a unit price of \$11.35, less a 9 percent prompt payment discount. Prompt payment discounts are not considered in evaluating bids, Federal Acquisition Regulation, 48 C.F.R. § 14.407-3, and the agency initially failed to consider Brenner's discount


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under the solicitation's trade discounts clause, which provides that trade discounts will be evaluated and that prompt payment discounts in excess of 2 percent will be considered as trade rather than as prompt payment discounts. O.K.'s contract was terminated for the convenience of the government after the contracting officer concluded, based on a complaint lodged by Brenner, that Brenner's bid should have been evaluated under the trade discounts clause and that the bid was low.

Our Office generally will not review a contracting agency's decision to terminate a contract for convenience since this is a matter of contract administration for consideration by a contract appeals board or by a court of competent jurisdiction. Where, however, the decision to terminate results from the agency's finding that the initial contract award was improper, we will review a protest against such action for the limited purpose of examining the validity of the award procedures which underlie the termination action. Central Texas College, B-211167.3, Mar. 2, 1984, 84-1 CPD ¶ 259. In other words, the scope of our review is restricted to determining whether the initial award was improper, and if so, whether the corrective action taken is sufficient to protect the integrity of the competitive procurement system.

We dismiss the protest because it concerns only matters outside this rule. O.K. does not contend that Brenner was not, in fact, the low offeror, that it rather than Brenner was otherwise in line for award, or that the corrective action DLA is taking is insufficient to protect the competitive system. O.K. merely contends that it should not now be denied the contract because it would be less costly to the government for performance to continue than it would be to pay termination costs. This, however, does not state a basis for protest; moreover, we have consistently held that it is appropriate for the government to protect the integrity of the competitive system by terminating an improper award and making the award that should have been made initially. Medical Gas & Respiratory Services, Inc., B-216632, Feb. 27, 1985, 85-1 CPD ¶ 246.

The protest is dismissed.


for Ronald Berger
Deputy Associate
General Counsel